TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~451.~~

FRANCIS DANDALET, PLAINTIFF IN ERROR,

vs.

WILLIAM PRESCOTT SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 28, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 451.

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vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Monday in November, (being the seventh day of the same month,) in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable Hugh L. Bond, circuit judge 4th circuit; William F. Giles, judge Maryland district; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—

Among other were the following proceedings, to wit:

FRANCIS DANDALET
vs.
WILLIAM PRESCOTT SMITH.

Be it remembered that, heretofore, to wit, on the 8th day of October, in the year of our Lord one thousand eight hundred and seventy, William Prescott Smith, by Archibald Sterling, esquire, his attorney, filed in the circuit court here the following petition, to wit:

To the honorable the circuit court of the United States in and for the district of Maryland.

The petition of William Prescott Smith, of Baltimore City, in the State of Maryland, respectfully represents that, on the thirty-first day of March, in the year of our Lord eighteen hundred and seventy, a suit was commenced against him in one of the courts of the State of
2 Maryland, to wit, the superior court of Baltimore City, in the State aforesaid, wherein a certain Francis Dandalet is plaintiff; that process in said suit, to wit, a summons, was duly served on your petitioner in the district aforesaid; that, at the time the cause of action in said suit is alleged to have occurred, your petitioner was an officer of the United States, to wit, the collector of internal revenue for the third collection district of Maryland, appointed under and acting by authority of the act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30th, A. D. 1864; that the said suit was commenced to recover from your petitioner a large sum of money, to wit, the sum of twenty-seven hundred and eighteen dollars, ($2,718 00,) which the said Francis Dandelet claims was exacted from him without lawful authority by this petitioner under color of his office as collector of internal revenue for the third collection district of the United States in and for the State of Maryland.

And your petitioner presents this petition, with the affidavit and certificate attached thereto, to your honorable court, and prays that the same may be duly filed in the office of the clerk thereof, and that the said cause may be entered on the docket of the court, and be proceeded in, as a cause originally commenced therein, in accordance with the provisions of the act of Congress approved July 13th, 1866, chapter 184, section 67.

And your petitioner will ever pray, &c.

W'M PRESCOTT SMITH.

STATE OF MARYLAND,
City of Baltimore, to wit:

Be it remembered that, on this eighth day of October, A. D. 1870, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared William Prescott Smith, the defendant in the suit aforesaid, and made oath, in due form of law, that the matters and things set forth in the foregoing petition are true, to the best of his knowledge and belief.

C. JACKSON RINGROSE, *J. P.*

I hereby certify that I am counsellor at law for the petitioner in the suit referred to in his petition; that I am an attorney of the superior court of Baltimore City, which is a court of record of the State of Maryland, and is the court in which said suit is pending; and that, as counsel for the petitioner, I have examined the proceedings against him, and carefully enquired into all the matters set forth in the petition, and that I believe the same to be true.

A. STERLING, JR.

On which said petition is the following endorsement:

MR. CHEW: File this; enter the suit on the docket of the circuit court of the U. S. for Maryland district, and issue certiorari to the superior court of Balto. City, requiring said court to send to the U. S. C. C. for the 4th circuit in and for the district of Md. the record and pro-
4 ceedings in the above-entitled cause, under the 67th sec., act July 13th, 1866, ch. 184.

A. STERLING, JR.,
U. S. Att'y & Att'y for W. P. Smith, Petitioner.

Whereupon certiorari was issued, as prayed.

And afterwards, to wit, on the 5th day of November, in the year aforesaid, the said superior court of Baltimore City transmitted to the circuit court here, in pursuance of the command of the said certiorari, the transcript of the record and proceedings aforesaid, together with said certiorari; which are in the words and of the tenor following, to wit:

Certiorari.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

[SEAL.] To the judge of the superior court of Baltimore City, greeting:

Whereas lately, in the said superior court of Baltimore City, a certain William Prescott Smith, of the city of Baltimore, was summoned to answer unto Francis Dandalet in a plea, &c., which said plea, as it is said, is still depending before you in the said superior court of Baltimore City undetermined, and the circuit court of the United States for the fourth circuit in and for the Maryland district, being desirous, for certain reasons, that the record and proceedings in the plea aforesaid should by you be certified to it:

You are therefore hereby commanded to send, under your seal, the record of the proceedings aforesaid in the plea aforesaid, with all
5 things touching the same, by whatsoever names the parties aforesaid in the plea aforesaid may be called, unto the said circuit

court of the United States, to be held at the city of Baltimore on the first Monday November next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able thereon to proceed, and to do what shall appear to them of right ought to be done.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued Oct. 10, 1870.

JAMES W. CHEW,
Clerk Circuit Court.

Which said writ is thus endorsed, to wit:

The execution of the within writ will appear by certain schedules hereunto annexed.

GEORGE W. DOBBIN.

STATE OF MARYLAND,
City of Baltimore, set:

At a session of the superior court of Baltimore City, in the eighth judicial *court* of the State of Maryland, begun and held at the court-house in the city of Baltimore, in and for the city aforesaid, on the second Monday of September (being the twelfth day of the same month,) in the year of our Lord one thousand eight hundred and seventy—

Present, The Honorable George W. Dobbin, associate judge of the supreme bench of Baltimore City, assigned to and presiding in
6 the superior court of Baltimore City; Augustus Albert, esquire, sheriff; George Robinson, clerk—

Among other, were the following proceedings, to wit:

FRANCIS DANDELET, PLAINTIFF.
vs.
WILLIAM PRESCOTT SMITH, DEFENDANT.

Be it remembered that, heretofore, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and seventy, the said Francis Dandelet, by George C. Maund, esquire, his attorney, prosecuted and sued forth out of the court here, the writ of the State of Maryland of summons, directed to the sheriff of Baltimore City aforesaid, in the words and of the tenor following, to wit:

Writ of Summons.

BALTIMORE CITY, *to wit:*

[SEAL.] State of Maryland to the sheriff of Baltimore City, greeting:

You are hereby commanded to summon William Prescott Smith, of Baltimore City, to appear before the superior court of Baltimore City, to be held at the court-house, in the same city, on the second Monday of April, R. day next, to answer an action at the suit of Francis Dandalet, and have you then and there this writ. Witness the Honorable T. Parkin Scott, chief judge of the supreme bench of Baltimore City, the tenth day of January, 1870.

Issued, 31st day of March, 1870.

GEORGE ROBINSON, *Clerk.*

7 At which mentioned second Monday of April, in the year of our Lord one thousand eight hundred and seventy, being a rule day of said court, and the day of the return of the foregoing writ, comes into the superior court of Baltimore City here, the said Francis Dandelet, by his attorney aforesaid, and the sheriff of Baltimore City aforesaid, to wit, Augustus Albert, gentleman, to whom the foregoing writ was in form aforesaid directed, makes return to the court here thus endorsed, to wit:

"Non est.

"AUGUSTUS ALBERT, *Sheriff.*"

And the said William Prescott Smith doth not come.

Thereupon, the said Francis Dandelet, by his attorney, prosecuted and sued forth, out of the superior court of Baltimore City here, an alias writ of summons directed to the sheriff of Baltimore City aforesaid, in form following, to wit:

Writ of Summons.

BALTIMORE CITY, *to wit:*

[SEAL.] State of Maryland, to the sheriff of Baltimore City, greeting:

You are hereby commanded to summon William Prescott Smith, of Baltimore City, to appear before the superior court of Baltimore City, to be held at the court-house, in the same city, on the second Monday of May next, to answer an action at the suit of Francis Dandelet, and have you then and there this writ. Witness the Honorable T. Parkin Scott, chief judge of the supreme bench of Baltimore City, the 10th day of Jan'y, 1870.

Issued 16th day of April, 1870.

G. O. ROBINSON, *Clerk.*

8 At which said second Monday of May, in the year of our Lord eighteen hundred and seventy, being the day of the return of the foregoing writ, comes into the superior court of Baltimore City here, the said Francis Dandelet, by his attorney aforesaid, and the sheriff of Baltimore City aforesaid, to wit, Augustus Albert, gentleman, to whom the foregoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Summoned.

"AUGUSTUS ALBERT, *Sheriff.*"

And the said William Prescott Smith being called, appears in court here, by Archibald Sterling, esquire, his attorney.

And thereupon, the said William Prescott Smith, by his said attorney, prays that the said Francis Dandalet may declare against him the said William Prescott Smith in the plea aforesaid.

Whereupon it is ruled by the court here, that the said Francis Dandelet declare against the said William Prescott Smith in the plea aforesaid, or judgment will be rendered against him by default.

And the said Francis Dandelet, by his attorney aforesaid, prays leave of the court here, to imparle until the second Monday of September next, and he hath it. The same day is given to the said William Prescott Smith, then & there, &c.

At which said second Monday of September, in the year eighteen hundred and seventy, come again into court here, the parties aforesaid, by their attorneys aforesaid.

And thereupon the said Francis Dandalet, by his attorney aforesaid, declares against the said William Prescott Smith in the action aforesaid in form following, to wit:

9 *Declaration.*

In the superior court of Baltimore City.

BALTIMORE CITY, *to wit:*

Francis Dandelet, by George C. Maund, his attorney, sues William Prescott Smith, collector of internal revenue for the United States in and for the third collection district of the State of Maryland for—

1. Money lent by the plaintiff to the defendant.
2. Money paid by the plaintiff for the defendant at his request.
3. Money received by the defendant for the use of the plaintiff.
4. Money found to be due from the defendant to the plaintiff on accounts stated between them.
5. And for money illegally collected by the defendant from the plaintiff.

And the plaintiff claims $5,000 00.

GEO. C. MAUND,
Attorney for Plaintiff.

Which declaration is thus endorsed, to wit:

"Service of copy admitted, this 1st October, 1870.

"A. STERLING, JR.,
"*Attorney for Defendant.*"

Thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here, that the said defendant answer the declaration of the said plaintiff, in the action aforesaid, or judgment will be rendered against him by default.

And thereupon, the said defendant, by his attorney aforesaid, files in court here the following pleas, to wit:

10 *Pleas.*

In the superior court of Baltimore City. September term, 1870.

DANDELET
vs.
SMITH.

And the said William Prescott Smith, the defendant in this action, by Arch'd Sterling, jr., his attorney, says for a first plea, that he never was indebted as alleged; and for a second plea, says that he did not promise as alleged.

ARCH'D STERLING, JR.,
Attorney for Defendant.

And thereupon at the above term, to wit, on the eighteenth day of October, in the year aforesaid, a certain writ of certiorari issued by the circuit court of the United States for the fourth circuit in and for the Maryland district, directed to the judge of the superior court of Baltimore City, was exhibited to the judge of the court here, directing that the record of the proceedings aforesaid, in the plea aforesaid, &c., be

transmitted to the said circuit court of the United States for the fourth circuit in and for the Maryland district.

Thereupon, it is ordered by the court here, in obedience to the command of the said writ of certiorari, that a record of the proceedings aforesaid and all things thereunto relating, together with the said writ, be transmitted to the circuit court of the United States for the fourth circuit in and for the Maryland district.

STATE OF MARYLAND,
City of Baltimore, set:

11 I, George Robinson, clerk of the superior court of Baltimore City, do hereby certify that the aforegoing is a full, true, and entire transcript, taken from the record and proceedings of the said court in the therein-entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of the superior court of Baltimore City aforesaid, on this thirty-first day of October, eighteen hundred and seventy.

[SEAL.] GEO. ROBINSON, *Clerk.*

[5-cent int. rev. stamp.]

And now here at this day, to wit, the first Monday of November in the year aforesaid, come into the circuit court here the said Francis Dandelet, by George C. Maund, his attorney, and the said William Prescott Smith, by Archibald Sterling, his attorney.

And afterwards, to wit, on the 21st day of November, in the year of our Lord 1870, the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here the following agreement, to wit:

In the circuit court of the United States for the district of Maryland.

FRANCIS DANDELET }
vs. }
W'M PRESCOTT SMITH. }

We agree in this case to waive a jury, and request the court to try and determine the issues of fact without the intervention of a jury.

GEO. C. MAUND,
Attorney for Plaintiffs.
A. STIRLING, JR.,
Attorney for Defendant.

12 Whereupon, all and singular, the premises being seen, heard and by the court here fully understood, therefore it is considered by the court here that the said Francis Dandelet take nothing by his said writ, but that he be, in mercy for his false complaint, and that the said William Prescott Smith go thereof without day, &c. It is also considered by the court here that the said William Prescott Smith do recover against the said Francis Dandelet the sum of for his costs and charges by him about his defence in this behalf sustained, to the said William Prescott Smith, by the court here now adjudged according to the form of the statute in such case made and provided, and that the said William Prescott Smith have thereof his execution, &c.

MEMORANDUM.—The said Francis Dandelet, by his attorney aforesaid, before judgment was entered in this case, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in the words and of the tenor following, to wit:

In the circuit court of the United States for the 4th circuit in & for the district of Maryland.

FRANCIS DANDELET
vs.
WILLIAM PRESCOTT SMITH.

At the trial of this cause before the court without the intervention of a jury, the plaintiff, to sustain the issues on his part, proved that the plaintiff is a brewer, and has carried on his business as such brewer in the city of Baltimore, and the third collection district of Maryland,
13 since and before the beginning of the year 1862, until the present time; and that he has regularly, during all the time in which he was required by law so to do, made monthly statements or returns to the assessor of said district of the beer manufactured and sold by him, and that these returns, or the assessments thereupon, were duly delivered by the said assessor to the collector of internal revenue for said district; that, in the month of August, 1867, the assessor made a second assessment for alleged deficiencies in the returns of the plaintiff, which second assessment is in the words and figures following, to wit:

F. Dandelet's assessment.

Deficiency from Sept. 1st, '62, to 28th Feb., '63,	522	bbls.,	$1..	$522	00
Do. " March 1, '63, " March 31, '64,	922	do.,	60	555	00
Do. " April 1, '64, " June 30, '64,	216	do.,	$1..	216	00
Do. " July 1, '64, " April 20, '67,	1,425	do.,	$1..	1,425	00
50c. penalty on $1,425				712	50
Total tax & penalty				3,430	50

And the said assessor entered the same upon the monthly list for the month of August, 1867, and delivered it to the collector; that the sum of $712 50 added by way of penalty was remitted, but the balance appearing to be due by the said second assessment for deficiences, to wit, $2,718 00, was paid by the plaintiff to the defendant under protest, he refusing to pay until the defendant threatened to distrain upon his property, and at the time of payment delivering to the defendant a writing protesting that he paid under compulsion alone; that an appeal from said second assessment was duly made by the plaintiff to the Commissioner of Internal Revenue, and a decision of said Com-
14 missioner was had thereon dismissing his appeal, and that this suit, instituted to recover back the said tax alleged by the plaintiff to have been erroneously and illegally collected, was brought within six months from the time of said decision.

Whereupon the plaintiff, by his counsel, prays the court to rule and find as follows:

Pl't'ff's prayer.

If the court believe from the evidence that the plaintiff was a brewer in the third collection district of the State of Maryland, from the first day of September, 1862, until the time of the second assessment in evidence in this case, and that the said plaintiff as such brewer rendered monthly returns for said period, and that said returns were duly transmitted to the collector by the assessor during the period aforesaid, and

that subsequent thereto Gen. Geo. W. Ross, who was assessor for said district, made the following reassessment against the plaintiff for an alleged deficiency, which reassessment is in form as follows, and was returned to the collector:

"A."—*F. Dandelet's assessment.*

Deficiency from	Sept. 1, '62, to	28 Feb'y, '63,	522 bbls. @ $1 ..	$522 00
Do.	March 1, '63, "	March 31, '64,	922 do. @ 60.	555 00
Do.	April 1, '64, "	June 30, '64,	216 do. @ $1 ..	216 00
Do.	July 1st, '64,	April 20, '67,	1,425 do. @ $1 ..	1,425 00
50c. penalty on 1,425				712 50
Total tax & penalty				3,430 50

And that the said plaintiff appealed from said assessment to the Commissioner of Internal Revenue, and a decision was made thereon, and said appeal dismissed; and that said plaintiff paid to the defendant, as collector of internal revenue for said district, the amount of said reassessment, to wit, the sum of two thousand seven hundred and eighteen dollars, under protest, to avoid a distraint threatened against him by defendant, and that this suit was brought within six months from the time of said decision, then the plaintiff is entitled to recover.

But the court rejected the said prayer of the plaintiff, and found and decided as follows:

In the circuit court of the United States for the district of Maryland.

FRANCIS DANDELET
vs.
WILLIAM PRESCOTT SMITH.

At the trial of this case the following facts were proved by the evidence adduced, to wit:

That the plaintiff is a brewer, and has carried on his business as such brewer in the city of Baltimore, and the 3d collection district of Maryland, since and before the beginning of the year 1862 until the present time; and that he has regularly, during all the time in which he was required by law so to do, made monthly statements or returns to the assessor of said district, of the beer manufactured and sold by him, and that these returns, or the assessments thereupon, were duly delivered by the said assessor to the collector of internal revenue for said district. That, in the month of August, 1867, the assessor made a second assessment for alleged deficiences in the returns of the plaintiff, which second assessment is in the words and figures following, to wit:

F. Dandelet's assessment.

Deficiency from	Sep. 1, '62, to	28 Feb., '63,	522 bbls., @ $1	$522 00
Do	March 1, '63, "	March 31, '64,	922 do, @ 60c.	555 00
Do	April 1, '64, "	June 30, '64,	216 do, @ $1	216 00
Do	July 1, '64, "	April 20, '67,	1,425 do, @ $1	1,425 00
50 c. penalty on $1,425				712 50
Total tax & penalty				3,430 50

And the said assessor entered the same upon the monthly list for the month of August, 1867, and delivered it to the collector. That the sum of $712 50, added by way of penalty, was remitted, but the balance appearing to be due by the said second assessment for deficiencies, to wit, $2,718, was paid by the plaintiff to the defendant under protest, he refusing to pay until the defendant threatened to distrain upon his property, and at the time of payment delivering to the defendant a writing, protesting that he paid under compulsion alone. That an appeal from said second assessment was duly made by the plaintiff to the Commissioner of Internal Revenue, and a decision of said Commissioner was had thereon dismissing his appeal, and that this suit, instituted to recover back the said tax alleged by the plaintiff to have been erroneously and illegally collected, was brought within six months from the time of said decision.

WILLIAM F. GILES.

Judgment.

17 FRANCIS DANDELET
vs.
W'M PRESCOTT SMITH. } Judgment of the court.

This case having been submitted to the court, under the provisions of the act of March 3rd, 1865, the court having heard and considered the facts given in evidence, and the arguments of the several , do find for the defendant, with his costs in this behalf, to be taxed by the clerk, and judgment will be entered accordingly.

HUGH L. BOND.
WILLIAM F. GILES.

Whereupon the plaintiff prayed leave to except in respect to said ruling of the court in rejecting the plaintiff's prayer, and in refusing to rule and find as prayed therein, and in making its decision and judgment aforesaid, and further prayed the court to sign and seal this his bill of exceptions, which is accordingly done this 25th day of November, A. D. eighteen hundred and seventy.

WILLIAM F. GILES. [SEAL.]

And now, here, at this day, to wit, the third day of December, in the year of our Lord one thousand eight hundred and seventy, the said Francis Dandelet, by his attorney aforesaid, produced to the court here the writ of the United States of America, for the correcting of errors of, and upon the premises, commanding that the judgment aforesaid, so as aforesaid rendered, with all things thereunto relating, be
18 transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December instant, the tenor of which said writ is as follows, to wit:

19 THE UNITED STATES OF AMERICA:

[SEAL.] The President of the United States of America to the judges of the circuit court in and for the Maryland district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between Francis Dandalet, plaintiff, and William Prescott Smith, defendant, a manifest error hath happened to the great damage of the said Francis

Dandelet, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December, instant, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued the third day of December, A. D. 1870.

JAMES W. CHEW,
Clk Circuit Court.

20

21 The United States of America to William Prescott Smith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington, on the first Monday of December, instant, pursuant to a writ of error filed in clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Francis Dandalet is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Francis Dandalet in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in this suit.

Witness my hand and seal this third day of December, in the year of our Lord one thousand eight hundred and seventy.

WILLIAM F. GILES. [SEAL.]

22 (Indorsed:)
Service admitted this 3 Dec., 1870.

A. STIRLING, JR.,
U. S. Dist. Att'y for Maryland

23 In pursuance whereof, and according to the act of Congress in such case made and provided, a record of the judgment aforesaid, with all things thereunto relating, together with the said writ of error annexed, is hereby transmitted to the Supreme Court accordingly.

Writ of error bond.

Know all men by these presents that we, Francis Dandelet, John Bowes, and Edmund T. H. Walter, of the city of Baltimore, are held and firmly bound unto William Prescott Smith in the full and just sum of three hundred dollars, lawful money, to be paid to the said William Prescott Smith, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by

these presents, sealed with our seals and dated this third day of December, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately at a circuit court of the United States for the fourth circuit and district of Maryland, begun and held in the city of Baltimore, on the first Monday in November, in the year of our Lord eighteen hundred and seventy, in a suit depending in said court between Francis Dandelet, plaintiff, and William Prescott Smith, defendant, judgment was rendered against the said Francis Dandelet, and the said Francis Dandelet having obtained a writ of error (and filed a copy thereof in the clerk's office of the said court) to reverse the judgment in the aforesaid suit, and a citation directed to the said William Prescott Smith, citing and admonishing him to be and appear at a Supreme Court to be holden at Washington on the first Monday in December, instant.

24

Now the condition of the above obligation is such, that if the said Francis Dandelet shall prosecute his said writ of error with , and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANCIS DANDELET. [SEAL.]
JNO. BOWES. [SEAL.]
EDMUND T. H. WALTER. [SEAL.]

Sealed and delivered in presence of—
JOHN H. LOWE.

Which bond is thus endorsed, to wit:

"Bond approved 3d December, 1870.

"WILLIAM F. GILES."

In testimony that the foregoing is a true transcript of the record and proceedings in the cause aforesaid, I have hereunto subscribed my name and affixed the seal of the said circuit court, this fifteenth day of December, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 451. Francis Dandalet, plaintiff in error, vs. William Prescott Smith. Maryland C. C. U. S. Filed 28th December, 1870.

Supreme Court of the United States.

FRANCIS DANDELET,

PLAINTIFF IN ERROR,

VS.

WILLIAM PRESCOTT SMITH.

Error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

GEO. C. MAUND,
JNO. C. KING,
Attorneys for Plaintiff in Error.

S. SANDS MILLS & CO., Printers, 145 W. Pratt St., Baltimore, Md.

Supreme Court of the United States.

FRANCIS DANDELET,

PLAINTIFF IN ERROR,

vs.

WILLIAM PRESCOTT SMITH.

Error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR PLAINTIFF IN ERROR.

GEO. C. MAUND,
JNO. C. KING,
Attorneys for Plaintiff in Error.

This case was tried before the Court without the intervention of a jury.

The plaintiff is a brewer in the city of Baltimore, and the defendant was, at the time of the proceedings complained of, the

Collector of Internal Revenue for the Third Collection District of Maryland.

This suit was brought to recover back a tax amounting to $2,718, alleged by the plaintiff to have been erroneously and illegally collected from him by the defendant as collector.

At the trial there was no dispute between the parties as to the facts. All of the evidence in the case was offered by the plaintiff, none by the defendant.

These undisputed facts are set forth in three distinct places in the record in precisely the same phraseology. (Record, pages 7, 8, 9.)

1st. They are recited in the bill of exceptions (page 7) as the facts proved at the trial.

2d. They are recited in the plaintiff's prayer (pages 7 and 8) as the facts which, under the law, constitute his right to recover, and

3d. They are recited in the special finding of the Court (pages 8 and 9) as the facts which "were proved by the evidence adduced."

These facts as specially found by the Court are as follows:—"That the plaintiff is a brewer, and has carried on his business as such brewer in the city of Baltimore, and the Third Collection District of Maryland, since and before the beginning of the year 1862, until the present time; and that he has regularly, during all the time in which he was required by law so to do, made monthly statements or returns *to the assessor of said* district of the beer manufactured and sold by him, *and that these returns, or the assessments thereupon, were duly delivered by the said assessor to the Collector of Internal Revenue for said district;* that in the month of

August, 1867, the assessor made a second assessment for alleged deficiencies in the returns of the plaintiff, which second assessment is in the words and figures following, to wit:

F. DANDELET'S ASSESSMENT.

Deficiency from Sept. 1st, '62, to 28th Feb. '63,	522 bbls.	$1...	$522 00
do do Mar. 1st, '63, to March 31, '64,	922 do	60c.....	555.00
do do April 1, '64, to June 30, '64,	216 do	$1....	216.00
do do July 1, '64, to April 20, '67,	1,425 do	$1....	1,425 00
50 per cent. penalty on $1,425.....			712.50
Total tax and penalty.....			$3 430.50

And the said assessor entered the same upon the monthly list for the month of August, 1867, and delivered it to the Collector; that the sum of $712.50 added by way of penalty was remitted, but the balance appearing to be due by the said second assessment for deficiencies, to wit: $2,718, was paid by the plaintiff to the defendant under protest, he refusing to pay until the defendant threatened to distrain upon his property, and at the time of payment delivering to the defendant a writing protesting that he paid under compulsion alone; that an appeal from said second assessment was duly made by the plaintiff to the Commissioner of Internal Revenue, and a decision of said Commissioner was had thereon dismissing his appeal, and that this suit, instituted to recover back the said tax alleged by the plaintiff to have been erroneously and illegally collected was brought within six months from the time of said decision."

The above being the facts of the case as ascertained by the special finding of the Court, the question upon this appeal is, are

these facts sufficient to support the judgment of the Court below? That judgment was for the defendant.

Brooklyn Life Ins. Co. vs. Helen A. M. Miller.
(Decided by this Court in 1871.)
13 U. S. Statutes at Large, 501.

The special finding of the Court shows that if the assessment for deficiency, paid by plaintiff to defendant, was illegally made and illegally collected, the plaintiff before bringing suit had done all things required by law as pre-requisites to his right to recover; for

1st. The Court finds "that an appeal from said second assessment was duly made by the plaintiff to the Commissioner of Internal Revenue," before bringing suit. Such appeal is made necessary by the 19th Sec. of the Act of Congress of March 2d, 1867, and

2d. The Court finds that the amount of the assessment was paid by the plaintiff, not voluntarily, but under protest and to avoid a distraint threatened against his property; and such constrained and involuntary payment seems under the decisions to be essential to the right to recover.

City of Philadelphia vs. Collector, 5 Wall., 720–731.
Pacific Ins. Co. vs. Soule, 7 Wall., 440.

It follows, therefore, that having paid the assessment, and made his unsuccessful appeal to the Commissioner of Internal Revenue, the plaintiff acquired the right to recover in this suit the money paid by him to the defendant as Collector, if the assessment was "erroneously or illegally" made.

The assessment is set forth in words and figures in the special finding of the Court, which in giving its judgment for the defendant treated the assessment as authorized by law. In this it is contended the Circuit Court committed error.

POINTS.

First. The assessment is void upon its face. Even if the assessor had authority (which is denied) to re-assess for the whole period riod of time intervening between Sept. 1862, and April 20th, 1867, he had no right to divide the said period arbitrarily, as he has done, but was compelled to re-assess month by month, indicating the deficiency for each month, so as to make his re-assessment coincide in time with the monthly returns of the plaintiff. No law has been found under which the assessor in this case can claim to have acted, unless it be Section 9 of the Act of July 13th, 1866, and that section provides that "the said assessor may from time to time, or at any time within fifteen months from the time of the passage of this act, or from the time of the *delivery of the list to the Collector* as aforesaid, enter on any monthly or special list * * * the names of the persons or parties, in respect to whose returns as aforesaid there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amounts for which such persons or parties may be liable, over and above the amount for which they may have been, or shall be, assessed upon *any return, or returns* made as aforesaid, and shall certify or return said list to the Collector as required by law."

Does not this language give to the brewer the privilege of knowing which one of his monthly returns is claimed by the assessor to be deficient—and the amount of the deficiency? The claim or accusation of the assessor would then be so specific as to admit of a defense; but how can the brewer defend himself against a re-assessment so arbitrary and sweeping in point of time as the one made in this case?

In fact the entire system created by the Internal Revenue laws requires the interpretation of the 9th Section, here contended for.

Second. If Section 9, referred to in the first point, embraces brewers and distillers at all (which is denied) then the re-assessment in this case is void, because it entirely disregarded the fifteen months limitation clause contained therein. Instead of confining himself, as he was bound by the law to do to fifteen months, the assessor in this case actually covered by his re-assessment a period of nearly five years.

Third. But the said Section 9th, Act July 13th, 1866, does not refer at all to the tax assessed upon brewers. This section only contemplates those persons whose duty it was, under the law, to make annual or monthly returns which were delivered by the assessor to the Collector. But this Act of 13th July, 1866, by its Sections 52, 53, 54, 55, 56, 57, 58 changed the mode of assessing and collecting the tax upon malt liquors, the payment of said tax being, according to its provisions, after September 1st, 1866, *by stamps*, and brewers being no longer, after that time, required to make monthly returns. That this view is correct, and that persons paying their tax by stamps were not liable to be re assessed for any alleged deficiency further appears from Sec 5, Act 2d March, 1867. Manifestly this last section was enacted for the

express purpose of giving to the assessor a power which, in the opinion of Congress, he did not possess under the 9th Section of Act of 13th July, 1866. Hence as the special finding of the Court shows that in this case the assessor re-assessed for alleged deficiencies in the returns of the plaintiff after Sept. 1st, 1866, down to April 20th, 1867, and as the plaintiff during that period made no returns, and was not required by law to make them, but paid his tax by stamps, this re-assessment was unauthorized by law and void.

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Attorneys for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1863.

FRANCIS DANDALET, *Plaintiff in Error,*
vs.
WILLIAM PRESCOTT SMITH. } No. 5.

In Error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

In reply to the assignment of errors by the plaintiff, we submit, following his arrangement, that—

1. The assessment is valid.

Monthly returns were required from *brewers*, &c., in the interest of the public, not in their own. Therefore, the change of words in internal-revenue legislation, by which a provision for *monthly* specifications of transactions in the *returns* is abandoned in the direction for *second assessments*, is in accordance with the reason of the thing.

Again: the *brewer* knows all the details of his own business, and cannot complain of being required to specify them. It is otherwise when it becomes the official duty of *third persons* to establish that in the course of such business there has been false dealing with the public. It is plainly unreasonable to embar-

rass such an investigation by requiring that the very month in which the clandestine wrong was committed shall be specified and proved, or the public fail to obtain redress. If within whatever period is allowed for enforcing collections, (a matter to be discussed under the second head,) the *brewer* be shown to have committed a *tort* against the Government, there seems in such case to be no more reason for requiring a specification of the *exact time* at which it was done, than in the case of any other prosecution. That in such proceedings, which are of nature of proceedings in regular courts, the statute has required less particularity from the one party when called upon to speak, than from the other when so called upon, is but in conformity with a universal maxim controlling such matters: "Less certainty is requisite when the law presumes that the knowledge of the facts is more properly or peculiarly in the opposite party;" so, "when it is to be presumed that the party [called upon] is not acquainted with the minute circumstances." 1 Chit. Pl., 234, 5.

Besides, in suits like this—brought by a tax-payer to recover money exacted under *second assessments*—the statute (which, in this, however, is only declaratory of the common law) throws the burden of proof upon the tax-payer. (XIV Stat., 111.) He is required to show that his returns are *not* false. If he has kept his books according to the requirements of law ever since the organization of this system, this is not difficult to do; and in most cases it would be but little more difficult when the assessor sums up the results of his inquiry in

the form given here, than when in the form suggested by the plaintiff in error. From the large amount of deficiency suggested here, it is probable that false dealings are alleged to have occurred in every month, in which event the plaintiff has nothing, real or fancied, to complain of.

Nor is there anything "arbitrary" (as suggested by the plaintiff) in the mode of assessment here adopted. The successive periods, constituting distinct items in the account, mark, as the assessor understood it, successive changes in the revenue law. The tax on brewers began on the first of September, 1862, at a dollar a barrel. (XII Stat., 450 and 723.) For the period between March 1, 1863, and March 31, 1864, inclusive, it was reduced to sixty cents. (XII Stat., 723.) After the latter day, the former provision revived; and after the 30th of June, 1864, a penalty of fifty per cent. was added where the return was erroneous, because of *refusal* or *neglect*. (XIV Stat., 102.)

2. The statute of 1866 imposes no *limitation* upon prosecutions for false returns made before its passage, except that they must be set on foot within fifteen months from the time of its enactment. The alternative limitation of fifteen months, *after the delivery of the list to the collector*, is intended for lists so delivered after the passage of the act, as in such cases the former limitation would obviously be improper.

3. Section 9, of the act of July 13, 1866, *does include brewers.*

The basis of the argument for the plaintiff extends only to frauds committed by brewers after the passage

of that act, inasmuch as previously they were required to make *returns*. The reason and the words of the section apply to previous violations of the internal revenue act by *brewers* as completely as to those of any class of manufacturers. The principle of the third objection made by the plaintiff extends only to the period during which the plaintiff is required to pay tax *by stamps*, that is, to the period after the 1st of September, 1866. Therefore, if that objection be sound, it does not warrant the prayer based thereupon in the court below. The proper conclusion of such prayer would have affected only the fourth item in the assessment, whereas the plaintiff asks for judgment upon all. Therefore, he cannot in any event sustain his exception.

Besides, it seems that such suggestion is erroneous *in toto*.

The act of March 2, 1867, section 5, (XIV Stat., 472,) supplies the proper directions for correcting errors and misdealings in cases where taxes are paid *by stamps*. It does not seek to create a debt, by relation, where none existed previously, but only to provide a *form of action*, as it were, to recover a debt already existing. The assessor is required *to estimate the amount of tax omitted, upon such information as he can obtain, and certify such to the collector, the subsequent proceedings for collection to be in all respects like the collection of taxes upon manufactures and products.*

There is nothing in this provision to forbid the adoption of the forms applicable in cases of *false returns* under the act of July 13, 1866.

Item four in this assessment is for taxes due partly under *false returns* and partly under *improper removals;* but as it was competent for the assessor to adopt *the same form* in both cases, he has done so.

We therefore submit that there is no error.

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S. F. PHILLIPS,
Solicitor General.